

Decision **PROPOSED DECISION OF ALJ WEISMEHL** (Mailed 11/9/2012)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Pac-West Telecomm, Inc.,

Complainant,

vs.

AT&T Communications of California, Inc.,
Teleport Communications Group of San
Francisco, Teleport Communications Group of
Los Angeles, and Teleport Communications
Group of San Diego,

Defendants.

Case 04-10-024
(Filed October 20, 2004)

DECISION CLOSING PROCEEDING

Summary

This complaint involved a traffic compensation dispute between competitive local exchange carriers. A decision in favor of complainant Pac-West Telecomm, Inc. (Pac-West) was confirmed on rehearing. A challenge to both the Commission's jurisdiction and the specific decision award was filed in United States District Court by AT&T Communications of California, Inc.¹ and its three affiliates, Teleport Communications Group of San Francisco, Teleport

¹ AT&T at the time of this complaint was a competitive local exchange carrier and not yet acquired by SBC Communications, which was subsequently renamed AT&T Inc.

Communications Group of Los Angeles and Teleport Communications Group of San Diego, (collectively AT&T). While Pac-West and the Commission initially prevailed at the District Court, the 9th Circuit United States Court of Appeals reversed and remanded to the District Court with directions on disposition of funds. A petition for modification pending at the Commission during this period has not been acted upon and is now moot. The proceeding should be closed.

Procedural Background

This complaint alleged that AT&T Communications of California, Inc. and its three subsidiaries, Teleport Communications Group of San Francisco, Teleport Communications Group of Los Angeles, Teleport Communications Group of San Diego, (collectively AT&T) refused to pay Pac-West Telecomm, Inc. (Pac-West) the charges due for calls AT&T originates for its local exchange customers and routes to Pac-West through the tandem switches of the two principal California incumbent local exchange carriers, Pacific Bell Telephone Company and Verizon California Inc.

Decision (D.) 06-06-055 was issued granting the complaint of Pac-West and awarding payment to Pac-West by AT&T. It found that the Federal Communications Commission's Internet service provider (ISP) Remand Order² did not apply to traffic of one competitive local exchange carrier to another and that, in this situation and in the absence of an interconnection agreement, state filed tariffs governing the termination of traffic were applicable. As a result AT&T was ordered to pay Pac-West \$7,115,014.16, but no interest or late charges.

² *Order on Remand and Report and Order, Implementation of Local Competition Provisions in Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 ¶¶1, 3-4 (2001) (*ISP Remand Order*).

AT&T filed an application for rehearing of D.06-06-055, which was denied by D.07-03-016. While the rehearing application was pending, AT&T filed an action in the United States District Court for Northern California (District Court) challenging the Commission's jurisdiction as preempted by the Telecommunications Act of 1996, seeking to enjoin the Commission and seeking a return of the amounts paid to Pac-West. In response to summary judgment motions, on August 12, 2008, the District court granted summary judgment to Pac-West and the Commission, upholding the Commission's decision in all respects.³

On June 21, 2011, the United States Court of Appeals for the Ninth Circuit (Court of Appeals) issued its decision reversing the summary judgment order granted by the District Court, providing a detailed analysis and direction for remand to the District Court.⁴ On October 11, 2011, the District Court issued its order following remand and both found preemption of this Commission and awarded a specific judgment to AT&T resolving this dispute with respect to all remaining sums.⁵

On April 6, 2007, during the pendency of related litigation in the federal courts, Pac-West filed a petition for modification of D.06-06-055 to require AT&T to pay interest and late charges on the tariff charges ordered to be paid. While a

³ *AT&T Communications of California v. Pac-West Telecomm, Inc.*, No. C 06-07271, (N.D. Cal. Aug. 12, 2008).

⁴ *AT&T Communications of California v. Pac-West Telecomm, Inc.*, 651 F.3d 980 (9th Cir. 2011).

⁵ *AT&T Communications of California v. Pac-West Telecomm, Inc.*, No. C 06-07271 (N.D. Cal. Oct. 11, 2011) Two orders were issued, one being the Order Following Remand and one Judgment on Remand.

responsive pleading was filed by AT&T, no action has been taken on the petition for modification.

Discussion

This matter appears to have been completely resolved by the District Court on remand following the Court of Appeals decision. It appears that there is no need for further action by this Commission, either specifically with respect to the pending petition for modification, or generally with respect to any other matter related to the complaint. While silence is not necessarily assent, it should be noted that neither party has filed anything in this docket for more than five years. There has been no inquiry or request made during consideration by the District Court or Court of Appeals or following final resolution by the District Court. The Commission is unaware of any other actions concerning this specific litigation in any other venue. Therefore it is appropriate to determine that the petition for modification is moot and to close this docket.

Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with § 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. No Comments were filed.

Assignment of Proceeding

The assigned Commissioner is Michael Peter Florio and the assigned ALJ is Philip Scott Weismehl.

Findings of Fact

1. A decision finding in favor of Pac-West and a decision denying an application for rehearing have been rendered in this proceeding.
2. A challenge to the Commission's jurisdiction to adjudicate this matter and a challenge to the outcome of our decisions was filed in the District Court.

3. In response to competing summary judgment motions, the District Court initially granted the summary judgment motion of Pac-West and the Commission, upholding the Commission's decision in all respects.

4. The Court of Appeals reversed the summary judgment order of the District Court, decided the substantive dispute in favor of AT&T and remanded the matter to the District Court.

5. The District Court concluded this matter in keeping with the directions of the Court of Appeals and disposed of all related sums.

6. A pending petition for modification, not heretofore acted upon, concerns the calculation of interest and late charges on sums awarded by the Commission but reversed by the Court of Appeals and District Court.

7. No filings have occurred in this docket in more than five years, including since the decision on remand of the District Court more than a year ago, nor have there been any other communications between the parties and the Commission.

Conclusions of Law

1. The decision of the Court of Appeals, as implemented by the District Court on remand, have finally disposed of all matters at issue in this proceeding.

2. The petition for modification filed in this docket on April 6, 2007 has been rendered moot by action of the District Court and Court of Appeals and need not be considered further.

3. This proceeding should be closed.

O R D E R

IT IS ORDERED that Case 04-10-024 is closed.

This order is effective today.

Dated _____, at San Francisco California.